

Linehan

A F T E R N O O N S E S S I O N

1:35 p.m.

THE VIDEO OPERATOR: We're back on the record at 1:35:15 on videotape number 3, continuing the deposition of Kathleen Linehan for June 14th, 1995.

K A T H L E E N L I N E H A N,
resumed, having been previously duly sworn, was examined and testified further as follows:

MR. PAYTON: At the break Ms. Robbins and I had a discussion about an ongoing stipulation I think the parties have tried to work out about the authority to give the oath with respect to any of these depositions. I think it's fair to say that we agree that neither side will raise any issue about the authority of our court reporters to administer an oath in connection with any of these depositions?

MS. ROBBINS: I do agree.

CONTINUED EXAMINATION

BY MR. PAYTON:

Q. Ms. Linehan, when we broke for lunch I was asking you about the February 25th, 1994 letter from Commissioner Kessler to Scott

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Ballin. Do you remember that?

A. Yes.

01:36:26 Q. At that time, February 25, 1994, you
were the head of the Washington office for Philip
Morris?

A. Yes.

01:36:34 Q. Is it fair to say that you were
either the chief lobbyist or the chief lobbyist
reported to you?

A. Yes.

01:36:40 Q. Were you the chief lobbyist?

A. Well, one could call me that.

01:36:46 Q. You were still registered as a
lobbyist?

A. Yes, yes.

01:36:48 Q. When you were the vice president in
charge of the Washington office?

A. Of course, yes.

01:36:52 Q. And one of the concerns that that
office had was about legislation and any
potential regulation that would affect the
tobacco industry?

A. Yes.

36:58 Q. Is that correct?

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A. Yes.

01:37:02 Q. Was there an ongoing concern about
FDA assertion of jurisdiction over the tobacco
industry?

A. When was that?

01:37:12 Q. February 1994?

MS. ROBBINS: Ongoing before?

A. Concern?

01:37:14 Q. Was there a concern about potential
assertion by the FDA of jurisdiction over the
tobacco industry?

MS. ROBBINS: Is that prior to the
letter?

01:37:22 Q. At that time.

MS. ROBBINS: Is that the time prior
to the letter or --

01:37:26 Q. Prior to the letter?

A. Prior to the letter?

01:37:28 Q. Yes.

A. Prior to the letter my recollection
is that while the issue had been raised by
several members of Congress in legislation that
they'd offered over a period of years, that
pre-broadcast it was merely an issue that I don't

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think I viewed as high on my list.

01:37:58 Q. You said pre-broadcast. But would it be fair to say pre this letter then, pre the February 25 letter you didn't have that concern?

A. No, pre-broadcast would be more accurate.

01:38:12 Q. Didn't the letter cause Philip Morris some concern about the FDA's position with respect to the manufacture of cigarettes and cigarette companies?

A. Well, the letter in tandem with the broadcast certainly would be cause for concern.

01:38:30 Q. The letter came out before the broadcast, on the Friday before the broadcast and I'm asking if there would have been concern about just the letter from the FDA given what the letter says about the cigarette industry?

A. I think there was concern about both.

01:38:54 Q. I understand that you have testified you don't have a present recollection of having seen that letter on the 25th of February 1994, but I want to ask you if it is conceivable to you that you did not see it on February 25th, 1994 given its subject matter?

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MS. ROBBINS: I object to the form of the question.

A. I couldn't speculate either way.

MS. ROBBINS: You're specifically talking about on that date as opposed to, you know, two days or three days or four days later? I mean you're particularly interested in on that date?

Q. The letter was in draft form, was received by the Washington office on that date by fax, there's an exhibit to that effect. I've forgotten the number, but you saw it. It's the Nicoli exhibit.

A. Yes.

Q. On that date, the letter is received by Philip Morris in final form on Friday, February 25th, 1994. And I am asking you about that day, Friday, February 25, 1994.

A. Yes.

Q. If you believe it was possible that you didn't see it at all?

A. I believe anything's possible. I could have seen it and not read it. I could have not received it. I don't know, I can't -- I have

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no present recollection of what happened on that day.

Q. I understand you have no present recollection. That's why I'm asking for your judgment about the significance of the letter and what your role was at Philip Morris at that time. Given that, the significance of the letter and your role at Philip Morris, is it conceivable to you now that you did not see it on February 25, 1994?

MS. ROBBINS: I'll object to the form of the question.

A. I don't know. I'm not sure where we're going.

Q. Ms. Linehan, I really wasn't going anywhere. When I asked you some questions earlier about this letter I believe you testified that you thought you had seen the letter sometime in February. All I was asking is isn't it quite likely that you saw this letter on Friday, the 25th, even though you have no present recollection, given the significance of the letter and your position, isn't it quite likely that you saw this letter on February the 25th?

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MS. ROBBINS: Asked and answered.

A. I might have. I might have seen it and not read it. I might have not seen it. I don't know. I certainly would have read it on the day after the broadcast.

Q. And actually, if you had seen it on the 25th you would have read it, wouldn't you? I mean this is a letter from the commissioner of the FDA writing about the tobacco industry. It's not put in the to be read file, is it?

A. You're asking me to speculate on what I did and I don't have a recollection of what I did.

Q. I'm not really asking you to speculate. I'm asking you to give me your judgment about how the office ran. Philip Morris issues a statement on the 28th, you have that statement in front of you, that deals with media inquiries but also addresses in the next to last paragraph, short paragraph, FDA concerns. That's before the Day One broadcast runs.

MS. ROBBINS: What's the question?

Q. Do you recall whether or not on Monday, the 28th of February you read or had read

1 Linehan

2 the FDA letter by then?

3 A. I don't recall.

4 (Defendants' Linehan

5 Exhibit 15 for identification, transcript of the
6 February 28th broadcast.)

01:43:52 7 Q. Ms. Ms. Linehan, I've had placed in
8 front of you what's been marked as Linehan
9 Exhibit 15 which is a transcript of the February
10 28th broadcast that I believe we, both sides have
11 been using in the course of depositions in this
12 case. Have you seen this version of the
13 transcript before?

14 A. No.

01:44:12 15 Q. There is a version of the transcript
16 that was in your files and if you would like, I
17 can let you look at that too. This is simply the
18 one I believe counsel are most familiar with.
19 But if you'd like to see the one that was in your
20 files, I'll put that there too.

21 A. No, fine.

01:44:48 22 Q. I'm going to start with the first
23 column where it says Cliff Douglas. It's right
24 at the top. Do you see that?

25 A. Yes.

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01:44:58

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Q. Did you know who Cliff Douglas was then?

A. Did I know who Cliff Douglas was then?

01:45:02

Q. Then. When you watched the broadcast.

MS. ROBBINS: Then being February 28th?

MR. PAYTON: Yes, February 28th.

A. I don't know. I don't know who Cliff Douglas is now.

45:12

Q. Well, there you go.

A. Might have known and forgotten.

01:45:20

Q. The transcript has Cliff Douglas saying, "The industry manipulates nicotine, takes it out, puts it back in, uses it as if it were sugar being put in candy." Do you see that?

A. Yes.

01:45:32

Q. As far as you know, is that sentence accurate or inaccurate? Or do you know?

A. It is my understanding that that's quite inaccurate.

01:45:42

Q. You didn't know that the industry took nicotine out in the course of manufacturing

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cigarettes and put it back in in the course of manufacturing cigarettes?

A. That's not really what that says.

MS. ROBBINS: Well, I object to the form of the question. But go ahead.

Q. It says, "The industry manipulates nicotine, takes it out, puts it back in."

A. It says quite a number of things actually that I would not agree with.

Q. Okay. What else would you not agree with?

A. We don't manipulate nicotine.

Q. Is it that you object to the word manipulate? I take it you don't object to the "takes it out, puts it back in"?

A. I object to the whole sense of the sentence. And sugar being put in candy has absolutely -- is no analogy to a naturally occurring substance which isn't -- sugar is not in candy.

Q. Sugar is a naturally occurring substance, isn't it?

A. Not in candy. It's extraneous. It's put into something called candy.

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01:46:52 2 Q. Some of us thought that sugar was
3 candy. But that's all right. Do you know if
4 sugar or a sugar substitute is put into
5 cigarettes in the manufacture of cigarettes?

6 A. If sugar or sugar -- I don't know.

01:47:06 7 Q. Do you know what Isosweet is?

8 A. No.

01:47:08 9 Q. Never heard of that?

10 A. No.

01:47:24 11 Q. Are you familiar with sugars being
12 put into the ingredients of cigarettes in the
13 course of manufacturing cigarettes?

14 A. No.

01:47:44 15 Q. Let's go to the second column. Most
16 of the rest of the first column is about what
17 else is in the broadcast, not about the smoke
18 screen which is the title of the segment of the
19 broadcast that deals with tobacco.

20 A. Yes.

01:48:00 21 Q. The second column starts with "Smoke
22 screen," and I'm going down to something I
23 believe we've gone over in another context, which
24 is the last sentence in that first paragraph.
25 Forrest Sawyer says this, I'm at the top, the

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last sentence in the first paragraph of the right-hand column: "For nearly a year, Day One has been investigating nicotine, the ingredient in cigarettes that keeps smokers addicted, and we've discovered that cigarette manufacturers have been carefully controlling levels of nicotine in cigarettes." I want to ask you about what are perceived to be the two parts of that statement. The first part is that nicotine is the ingredient in cigarettes that keeps smokers addicted. Okay?

A. Yes.

Q. Do you agree with that?

A. That nicotine is the ingredient in cigarettes that keeps smokers addicted?

Q. Yes.

A. I don't believe smoking is addictive.

Q. What is it?

A. What is what? Smoking?

Q. Yes.

A. Habit.

Q. Is nicotine the ingredient in cigarettes that makes smoking habit forming?

MS. ROBBINS: She didn't say habit

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forming, John.

MR. PAYTON: She said a habit.

MS. ROBBINS: She said it's a habit.

01:49:16 Q. Is nicotine the ingredient in
cigarettes that makes smoking habit forming?

A. I'm not a scientist, so I don't know
anything about nicotine.

01:49:30 Q. So you don't really know if nicotine
is the ingredient that keeps smokers addicted
either then?

MS. ROBBINS: That's been asked and
answered.

01:49:38 Q. Do you?

MS. ROBBINS: She gave you an answer
about addiction.

A. I don't feel cigarette smoking is
addictive.

01:49:44 Q. Is that a personal view?

A. That's a personal view, yes.

01:49:46 Q. Do you smoke?

A. No.

01:49:48 Q. I didn't hear the answer, I'm sorry?

A. No.

49:50 Q. It's also a company view, Philip

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Morris view?

A. Yes.

01:49:58 Q. Have you discussed issues of
addiction with any of the R&D people at Philip
Morris?

A. Not that I recall.

01:50:04 Q. Never discussed this with
Dr. Carchman?

A. Not that I recall.

01:50:10 Q. Or any of the others that we have
mentioned so far?

A. Not that I recall.

01:50:14 Q. Were you aware of any of the research
that Philip Morris had been conducting into
nicotine and nicotine delivery that has recently
been in the press?

A. Was I aware when?

01:50:32 Q. Then, 1994, February.

MS. ROBBINS: Wait a minute. You're
asking her whether in 1994 she was aware of
research that has lately been reported in the
press?

MR. PAYTON: Yes.

MS. ROBBINS: As reported in the

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press? I mean as I think you know, Philip Morris doesn't know what documents were in the documents that were given to The New York Times, so Philip Morris doesn't know --

01:50:56 Q. Let me tell you what my understanding is, and it is from the press. It is that a spokesperson on behalf of Philip Morris, Mr. Wall, as a matter of fact, has confirmed that there was research that went on for 15 years. I don't know what the documents are that are being reported on either, but there is I believe a confirmation that Philip Morris did conduct nicotine related research for 15 years. Were you aware of that research being conducted when you were at Philip Morris in February of 1994?

A. I would say that I wasn't really aware of much in terms of R&D prior to the Denoble hearing.

01:51:42 Q. Is that a yes, you were not aware of the nicotine related research that was being conducted by Philip Morris in February of 1994?

MS. ROBBINS: Wait a minute. What does the in February 1994 relate to?

02:02 Q. In February of 1994, okay, in

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February of 1994, were you aware of any nicotine related research that was being conducted or had been conducted by Philip Morris?

A. It's impossible for me to answer that. I just don't know what I knew in February versus March, versus January or April or May.

Q. Okay. There came a time in 1994, I take it, when you became aware of nicotine related research that Philip Morris either had been or was then conducting; is that right?

A. Yes.

Q. And what was it that you became aware of?

A. I was aware of -- I became aware of a former R&D scientist, the reason being was that he was asked to be a witness before Henry Waxman, and his name was Victor Denoble, and the subject was his research.

Q. I just want to try and separate this in time even if we can't pinpoint the exact time. Prior to your knowledge of Victor Denoble and the research that you just described that he had been conducting, is it your testimony you were not before then aware of nicotine related

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research that Philip Morris had been conducting?

A. No, I don't -- I don't know whether I was aware of -- I was certainly aware when -- near the time that Victor Denoble testified. What I knew prior to that I don't know.

Q. When you say that it's your personal understanding as well as your understanding of the company's position that nicotine is not the ingredient that causes smoking to be addictive, is that based upon any information that you had derived from any studies that Philip Morris had conducted on nicotine related matters?

MS. ROBBINS: She can answer the question. You've mischaracterized what she said. She said she didn't think smoking was addictive.

MR. PAYTON: I asked her a different question.

MS. ROBBINS: Yes, but you referred to her prior testimony.

A. The basis for me to say it is just the mere common sense that there are millions of smokers out there who have quit without help.

Q. In the course of being the head of

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the Washington office, up to February of, --
through February of 1994, do you remember ever
seeing any documents that were marked
confidential or trade secret or highly sensitive
that were Philip Morris documents?

A. It would not be any kind of customary
practice for the head of the Washington office to
see a trademark or formula or anything like that.

Q. Do you recall seeing any R&D
documents, any R&D documents?

A. Any R&D documents?

Q. Yes.

A. I -- we -- I don't know.

Q. The second part of this sentence,
back to the first paragraph at the top of column
2, is "We've discovered that cigarette
manufacturers have been carefully controlling
levels of nicotine in cigarettes." Do you agree
with that?

A. No.

Q. I thought you did. What do you
disagree with about that?

A. I testified that --

Q. Controlling.

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MS. ROBBINS: Nicotine. Her testimony was precisely nicotine, don't control nicotine.

MR. PAYTON: I'm sorry, I'm sorry.

Q. This is the discussion we had about Philip Morris controls for tar, not for nicotine?

A. That's right.

Q. Are you familiar with the 1988 surgeon general's report?

A. Was I?

Q. Yes.

A. When.

Q. February 1994?

A. Not specifically, no.

Q. Were you --

MS. ROBBINS: Did she know of it, has she read it? What do you mean by familiar with it?

Q. Were you aware that -- let me go on down and I'll read you what's in the broadcast and see if that's something you're aware of. You go down to the second reference to John Martin, it's about two-thirds of the way down the page, it says "John Martin (voiceover) one ingredient

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contained in these tobacco leaves is known,
nicotine." Do you see that?

A. Yes.

Q. It says, "The 1988 surgeon general's
report identified nicotine as a highly addictive
drug and says this is why smoking can be as
difficult to quit as heroin or cocaine."

A. Yes.

Q. Were you aware that's what the
surgeon general's 1988 report said? Whether you
agree with the report or not I'm not asking you.
Do you understand --

A. I don't know whether that's the
surgeon -- I did not know what the '88 report had
said.

Q. Now, earlier in the same column, the
first reference to John Martin, it says, makes a
reference to one of the world's most profitable
substances. Do you see that it says profitable
and addictive?

A. Yes.

Q. Are cigarettes one of the world's
most profitable products? Philip Morris is a
pretty profitable company?

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A. It's financially doing all right I guess.

Q. The next sentence, actually two sentences later it says, "Cigarettes are a complex, scientifically engineered products about which little is known publicly." Do you agree with that?

A. I can't answer really how you would define complex, scientifically engineered since I'm not really a scientist, and I would disagree in terms of saying little is known publicly.

Q. You think a lot is known publicly?

A. I think quite a lot is known publicly.

Q. Let's just go through it. Let's go to the next page. I'm at the top of the left hand column where it says John Martin. Do you see that?

A. Yes.

Q. It says "And one thing smokers are supposed to get is nicotine. That was made clear decades ago by a Philip Morris official. He wrote this confidential internal memo: 'Think of the cigarette pack as 'a storage container for a

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day's supply of nicotine.' Think of the cigarette as 'a dispenser for a dose unit of nicotine.' Think of a puff of smoke as ^{the} *the* vehicle of nicotine.'" Do you remember seeing that? There was a visual of that also on the screen?

A. No.

02:00:18 Q. Were you familiar with those quotes?

A. No.

02:00:26 Q. This was quotes that were attributed to Dr. Dunne, do you remember those?

MS. ROBBINS: You're talking about on the broadcast?

MR. PAYTON: On the broadcast, yes.

A. Do I remember that on the broadcast?

02:00:42 Q. That's all right. Do you now know that it's Dr. Dunne --

A. Yes.

02:00:46 Q. -- who is reported to have made these statements?

A. Yes.

02:00:50 Q. What do you know about Dr. Dunne?

A. He was in R&D a long time ago.

00:56 Q. Did you ever review any of his

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memoranda or writings or documents?

A. No.

Q. What have you been told about Dr. Dunne?

A. Nothing.

Q. Do you know if those are in fact the statements he made or not?

A. I don't know anything about it.

Q. The next paragraph says, "It was here in Winston-Salem, North Carolina that the manufacturing process began to change. The R.J. Reynolds Tobacco Company pioneered a two-step process to make cigarettes more cheaply and to control the level of nicotine." Do you know if R.J. Reynolds Tobacco Company pioneered the use, development of reconstituted tobacco?

A. No, I don't.

Q. You don't know one way or another?

A. I don't know either way.

Q. If you keep on going down, the next reference to John Martin refers to Don Barrett and the American Tobacco Company. Are you familiar with the American Tobacco Company?

A. Yeah, American Tobacco Company is one

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of the five or six companies.

02:02:10 Q. Are you aware of any relationship
between Philip Morris and the American Tobacco
Company?

A. No.

MS. ROBBINS: I object to the form of
the question. What do you mean by relationship?

02:02:24 Q. Do you know if there was ever a
contractual relationship between the Philip
Morris and the American Tobacco Company?

A. I just don't know.

02:32 Q. Do you know if the American Tobacco
Company makes and sells reconstituted tobacco to
other tobacco manufacturers?

A. I don't know that.

02:02:38 Q. So you wouldn't know if Philip Morris
ever tried to contract with the American Tobacco
Company to purchase reconstituted tobacco?

A. No.

02:02:50 Q. The reference to Don Barrett, you see
that there?

A. Yes.

02:02:52 Q. Gives a quote from him and it says,
"And they would take the material, the dust, the

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1 tobacco dust that fell on the floor and they
2 would sweep those up and they would dump them
3 into a big bin and they would use that to make
4 the so-called reconstituted tobacco." Do you
5 have an understanding as to how the reconstituted
6 tobacco process operates?
7

8 A. Very generally, as a layman.

02:03:18 9 Q. What is it? Go ahead, what is it?

10 A. They take stems and generally I guess
11 not usable leaf, make it -- chop it up and in
12 order to use it they have to turn it into a sheet
13 and I don't know, they separate out the cellulose
14 fibers from the water solubles and they spread it
15 out on a large contraption and -- this is
16 probably doing such --

17 MS. ROBBINS: Scientific
18 contraption.

19 A. Yes, it's very scientific. And then
20 they make a sheet out of what was, you know,
21 small particles.

02:04:08 22 Q. Do you know if they use dust?

23 A. I don't know.

02:04:10 24 Q. Are you familiar with a second
25 reconstituted tobacco process that doesn't make a

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paper like sheet but just uses dust and otherwise not used portions of tobacco and tobacco materials to turn it into a reconstituted tobacco?

A. No, I'm not familiar with that.

Q. Are you familiar with what I believe Philip Morris calls the blended leaf process, BL?

A. No.

Q. And do you know what chemicals -- do you know if any chemicals are added in the course of the reconstituted tobacco process?

A. What chemicals are added?

Q. Yes. Do you know if chemicals are added?

A. I don't know.

MS. ROBBINS: It may have occurred to you by now, John, that she's not a scientist.

MR. PAYTON: It does occur to me and, I'm only going through this because I think much of what happens is in fact very complex and is largely unknown to most laypeople with respect to how cigarettes are made.

Q. Did you know that about 10 percent of the ingredients in reconstituted tobacco are in

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fact chemicals?

A. Chemicals? Like what are chemicals?

Q. Oh, all sort of things. Diammonium phosphate, have you ever heard of that?

A. What?

Q. Diammonium phosphate, DAP?

A. No.

Q. Isosweet?

MS. ROBBINS: What's your question?

She told you she didn't know what Isosweet was 10 minutes ago. What's your question?

MR. PAYTON: I asked her if she knew if 10 percent of the ingredients in reconstituted tobacco were chemicals and she said what chemicals and I'm identifying some of the chemicals.

Q. Didn't know that?

A. No.

Q. I'm going down to the reference to former RJR manager, do you see that?

A. Right in the center?

A. Yes.

Q. It says, "On average, the currently marketed brands contain about 22 percent

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reconstituted tobacco. " Does that sound about right? I remember your notes saying something like I believe 23 percent?

A. Yes, that's right.

Q. It says, "The cutrate or generic brands typically contain usually about double that." Do you know if that's accurate, or do you know at all?

A. I mean I don't know precisely whether it's double that but I would say it's logical to believe it's --

MS. ROBBINS: Don't guess. If you know then give him an answer. If you don't know, don't guess.

A. I don't know.

Q. Down to the part that comes after John Martin and in the middle of that it says, "Even though reconstituted tobacco allows the companies to produce cigarettes more cheaply," do you see where I am?

A. No.

Q. It is the third sentence after John Martin. I'm in the first column about two-thirds of the way down, the third reference to John

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Martin begins "Day One commissioned a laboratory analysis that" --

A. Okay, yes.

Q. "That confirmed the industry's heavy use of reconstituted tobacco in one brand from RJR. It comprised a quarter of a cigarette and another about a third. Even though reconstituted tobacco allows the companies to produce cigarettes more cheaply, there are problems: Poor taste and less nicotine." Were you aware of poor taste and less nicotine being problems related to the use of reconstituted tobacco?

A. No.

Q. Not one way or another, you don't know whether that's true or false?

A. I don't know whether it's true or false.

Q. It says, "So here's what the companies do in step 2. They apply a powerful tobacco extract containing nicotine and flavor to the reconstituted tobacco." Do you know if that is true or false, or do you just not know one way or the other?

A. I just don't know.

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02:08:42 Q. Okay. Go down to the bottom of the page where it says Mr. Neuhaus, do you see that?

A. Yes.

02:08:52 Q. Let me go to the previous sentence. John Martin is saying, "Dan Neuhaus is a vice president of Dr. Madis Laboratories. He told us how they make this concentrated extract that is rich in nicotine.

"Mr. Neuhaus: ^{They}~~You~~ put the solvent on it, whatever solvent it is, water or alcohol and you just percolate it, and as you percolate it, you concentrate it. It's basically the same if you're having a drip coffee pot. It's kind of a syrupy consistency, you know, like molasses."

Are you familiar with how you extract solubles and create an extract?

A. No.

02:09:24 Q. You don't know if that's right or wrong?

A. I don't know how you do that.

MS. ROBBINS: Who is the "you" in your sentence, John?

MR. PAYTON: You, you mean --

MS. ROBBINS: You asked her are you

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familiar with how you. You mean how one
extracts, how it's done in the industry?

MR. PAYTON: Yes.

MS. ROBBINS: Okay, fine.

Q. I'm at the second column on the top
where it says "Former RJR manager." Do you see
that right at the top?

A. Yes.

Q. The quote that follows that is "They
put nicotine in the form of tobacco extract into
a product to keep the consumer happy." Do you
know if that is true or false?

MS. ROBBINS: The "they" is referring
to the cigarette companies -- who's the "they"
referring to in the sentence? She doesn't have a
context for the sentence.

Q. Let's go back to the first reference
to John Martin in the second column where it says
"John Martin: Why would the tobacco companies
use this nicotine rich syrup" and then it goes
"Former RJR manager: They," I believe
referring to the tobacco companies, "put nicotine
in the form of ^{tobacco} extract into a product to keep the
consumer happy." Do you know if that is accurate

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or inaccurate?

A. Well, I would say first that I don't know whether the characterization of a nicotine rich syrup is accurate.

Q. You don't know one way or the other?

A. My understanding is that in the process the -- in the water soluble process the nicotine is significantly reduced, so I don't know how you would describe it as nicotine rich syrup.

Q. Let me tell you where I think we are in the manufacture of cigarettes here so you can disagree with me, but let me tell you where I think we are. We're now talking about a company, outside of a cigarette company that produces tobacco extract, okay, and then sells it to a tobacco company. And that's what's being described as a nicotine rich syrup.

A. Well, this seems to be mixing up, to me, what is referred to in one instance as a tobacco extract package and another the water soluble issue. So I'm getting a bit confused.

Q. I think it's confusing because both processes extract solubles from tobacco.

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MS. ROBBINS: Well, she's confused because she's confused. She didn't say that's why she's confused. It's confusing because we're reading this, you know, in spurts, out of context and it's very hard to follow.

MR. PAYTON: We'll just start reading more of it then.

MS. ROBBINS: Oh, great. Is there a pending question here?

MR. PAYTON: Not yet.

MS. ROBBINS: Okay.

12:46 Q. I believe I was asking you about the statement at the top of column 2 from the former RJR manager, "They put nicotine in the form of tobacco extract into a product to keep the consumer happy." And I asked you if that was accurate or inaccurate and I think you said that you were taking issue with whether or not it was a nicotine rich syrup?

A. No. Because you mentioned both of them.

02:13:08 Q. I did mention both of them?

A. In that context I started to talk about the first.

Linehan

02:13:12 2 Q. You're correct. I did mention them
3 both because John Martin's question is followed
4 by the statement from the RJR manager.

5 A. Right.

02:13:22 6 Q. And you were saying you weren't sure
7 the syrup was nicotine rich; is that right?

8 A. Well, I was describing my
9 understanding of the naturally occurring nicotine
10 and the reduction of the nicotine in the recon
11 process. That's why a lot of this discussion is
12 very -- doesn't seem to track.

13:50 13 Q. Okay. Apart from the extraction of
14 the solubles and reduction of that in the
15 reconstitution process, I want to focus on the
16 manufacture of tobacco extract by essentially
17 outside vendors. Are you familiar with that at
18 all?

19 A. Very generally.

02:14:12 20 Q. So do you know if what they make is
21 nicotine rich?

22 A. No. My understanding is that the
23 tobacco extract is primarily a flavoring package
24 and that it contains minuscule amounts of
25 nicotine.

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Linehan

02:14:28 Q. Do you know if the tobacco extract is part of a flavor package as opposed to a flavor package?

A. My understanding is that the expression is, and I may be wrong, the expression is used for precisely that, that it's a flavor package.

02:14:48 Q. The second reference in the second column to former RJR manager which is the next, still at the top of the page, and it has the RJR manager saying the waste filler. Are you familiar with the phrase waste filler?

A. No.

02:15:12 Q. Going down to the reference to John Martin, still about a third of the way down it says, "To try to verify that nicotine is being added to the reconstituted tobacco and cigarettes, we went to the American Health Foundation." Were you familiar with the American Health Foundation?

A. No.

02:15:32 Q. It says, "A respected research center in Valhalla, New York. At Day One's request the foundation separated and then analyzed the

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Linehan

reconstituted tobacco portion of several brands of RJR cigarettes. Reconstituted tobacco ordinarily contains 25 percent or less than the nicotine of regular tobacco, but the samples retested had up to 70 percent of the nicotine that would be found in regular tobacco. " Do you know what the normal nicotine content of reconstituted tobacco is?

A. All I know is that it's less than that naturally occurring leaf.

Q. You don't know if this sentence is accurate or inaccurate? You just don't know?

A. Which sentence?

Q. The two -- I'm sorry, the last two. "Reconstituted tobacco ordinarily contains 25 percent or less than the nicotine in regular tobacco, but the samples retested were up to 70 percent." You don't know if 25 percent or less is what the normal nicotine content is of reconstituted tobacco?

A. I think we said 22, 23, 25, plus.

Q. I'm confusing you with numbers that sound very similar.

MS. ROBBINS: I think -- I'm going to

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object. I think you've really got the wrong witness on a lot of this stuff. She said a whole lot of times she doesn't have this kind of scientific knowledge or manufacturing knowledge or R&D knowledge and you're asking her questions that are way out of her field. You can take your time up that way if you want to --

MR. PAYTON: I will accept that burdens and move on to some areas where she may know certainly the company's position on some of these issues.

MS. ROBBINS: That's fine.

02:17:08 Q. Let me just clarify the last part because I think there is some confusion that I don't want to leave in the record.

A. I asked you earlier what the reconstituted tobacco portion of a cigarette was and I think that was around 22, 23 percent.

A. Mm-hmm.

02:17:26 Q. And I think that was in your notes. This is about what is the nicotine content of the reconstituted tobacco and that's about 25 percent it says here. And all I was asking you is do you know if that is accurate or inaccurate or do you

Linehan

just not know?

A. I'm so -- I don't know. I'm very confused by the question.

Q. Have you heard of Greg conly, he's the health commissioner in Massachusetts or he was then?

A. Yes.

Q. On the next page he is quoted in there?

A. Yes.

Q. You were familiar with him before the broadcast?

A. Yes.

Q. Were you familiar with the Next cigarette?

A. The Next?

Q. Next, a cigarette that Philip Morris test marketed?

MS. ROBBINS: Capital N.

Q. N-e-x-t?

A. I knew that we had a Next cigarette.

Q. A cigarette that had the nicotine removed, you knew that?

A. Yes.

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Linehan

02:19:26 Q. Do you know how it did in its test market?

A. No.

02:19:54 Q. Let me go to the -- I don't see the page number, but I believe it is the fourth page of the transcript, the top left-hand column has John Martin right at the top. Do you see that?

A. Yes.

02:20:10 Q. Okay, I want to go to the previous page and read you the lead into that. At the very bottom it says "John Martin: So why don't cigarette makers take the nicotine out of cigarettes?" Do you see that?

A. Yes.

02:20:26 Q. And then it has Dr. C. Everett Koop who was the surgeon general, "Because they wouldn't sell cigarettes. If cigarettes didn't give you a bang, they wouldn't sell them." And John Martin says, "Philip Morris knows this from its own experience. In 1991, it test marketed Next, a denicotinized cigarette that it withdrew from the market because, without nicotine, few smokers would buy it."

Did you know that that was the result

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of the Next cigarette that Philip Morris tried to market?

MS. ROBBINS: Wait a minute. The that is confusing.

MR. PAYTON: Only what John Martin says.

MS. ROBBINS: Just the John Martin portion. That it withdrew it from the market -- is your question that it withdrew it from the market because without nicotine few smokers would buy it?

MR. PAYTON: Yes.

MS. ROBBINS: That's your question. Did you know that?

A. No, I don't know anything about Next.

Q. I'm going to stop going over the transcript, but having gone over the part that I have, and realizing I have not gone over all of it, do you now remember any other things that caught your attention when you watched the broadcast on February 28th, 1994?

MS. ROBBINS: Other than she's already testified to?

Q. Other than what you've already

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testified to?

A. No.

Q. You watched the broadcast the evening of the 28th of February and you went to work the next day. Can you tell me what happened on March 1st that related to this broadcast? Did you attend meetings, have discussions?

A. No, I can't tell you what I did on March 1st.

(Defendants' Linehan

Exhibit 16 for identification, two-page statement from Philip Morris dated March 1, 1994, production numbers PA 426583 and PA 426584 and 2032023916191 and 2032023916192.)

Q. You've been handed what's been marked as Linehan Exhibit 16, a two-page statement from Philip Morris dated March 1, 1994. It's production number PA 426583 and PA 426584 or ~~2032023916191~~ ²⁰²³⁹¹⁶¹⁹¹ and ~~2032023916192~~ ²⁰²³⁹¹⁶¹⁹².

Have you seen this statement before?

A. I may have seen it with counsel.

Q. You may have seen it in preparation for your deposition?

A. Yes.

Linehan

02:24:00 2 Q. You don't recall playing any role in
3 drafting or reviewing this statement?

4 A. No, I don't recall.

02:24:16 5 Q. You see the second paragraph on the
6 first page which is directed towards the FDA
7 commissioner?

8 A. Yes.

02:24:24 9 Q. "Those are the facts. Unfortunately,
10 FDA Commissioner Kessler, based on inaccurate
11 information, has stated that under FDA
12 regulation, cigarettes as we know them today
13 could be removed from the market even though such
14 an action, he says, raises societal issues of
15 great complexity and magnitude." You don't
16 recall playing a role in the drafting of that
17 part of the statement?

18 A. No, I don't.

02:24:56 19 Q. Do you know who did draft this?

20 A. No, I don't.

02:25:10 21 Q. Do you recall participating by
22 telephone in a meeting the morning of March 1 to
23 discuss and assess the Day One broadcast from the
24 night before?

25 A. I don't recall that specifically.

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Linehan

(Defendants' Linehan

Exhibit 17 for identification, documents,
production numbers PA 933139 through PA 933148
and 2025769254 through 2025769263.)

02:26:20 Q. Ms. Linehan, you've just been handed
what's been marked Linehan Exhibit 17, an exhibit
that attaches several different documents
together which I believe were originally
together. It begins with a March 2, 1994 letter
from William Campbell, president and CEO of
Philip Morris to the Honorable Harold L. Volkmer,
member of Congress. And attached to it are
apparently two attachments. It has production
number PA 933139 through PA 933148 or 2025769254
through 2025769263.

Did you review this in preparation
for your deposition today?

A. Yes.

02:27:38 Q. Do you recall receiving this document
and reviewing this document back in March of
1994?

MS. ROBBINS: You're talking about
the whole document?

27:46 Q. Yes, the whole document?

Linehan

MS. ROBBINS: After it was sent,
before it was sent?

02:27:58 Q. This document as it exists, which is
a signed --

A. I don't specifically remember reading
this document, but obviously as head of the
office I would have read the document because it
was going to members of Congress.

02:28:20 Q. Communications with members of
Congress would either go through your office or
be reviewed by your office; is that fair?

A. Yes.

02:28:30 Q. Is the same true about communications
with regulatory agencies, they would either go
through your office or be reviewed by your
office?

A. Yes.

02:28:44 Q. Do you recall playing a role, in
reviewing this letter, in the formation or
drafting stage?

A. I don't recall a review, no.

02:29:08 Q. Do you recall playing any role in the
preparation of this letter?

A. Not specifically, but...

Linehan

02:29:18 Q. Does that mean you have some general
recollection of playing a role in this?

A. Oh, generally, I would have certainly
been aware of it.

02:29:32 Q. But you have no specific recollection
at all?

A. No.

02:29:38 Q. Do you recall if your office played a
role?

A. Oh, yes, my office and I would play a
role, but --

29:44 Q. But the same answer, you don't have a
specific recollection --

A. No.

02:29:48 Q. -- of anyone in your office --

A. No.

02:29:50 Q. -- playing a specific role?

A. No.

02:30:04 Q. Looking at the first page of this
letter, at the bottom in the very last paragraph,
right in the center there's a sentence that
begins, "If Day One had bothered to check the
facts," do you see that?

A. Yes.

Linehan

02:30:18 Q. "If Day One had bothered to check the facts it would have learned that alcohol denatured with amounts of nicotine so small as to be undetectable in the final product is the only form of denatured alcohol approved for ^{tobacco} processing and manufacturing by the Bureau of Alcohol, Tobacco and Firearms." Do you know if Day One attempted to check that fact with Philip Morris?

MS. ROBBINS: Does she know if Day One attempted --

MR. PAYTON: That's right.

MS. ROBBINS: Do you know if Day One attempted to check that fact?

02:30:48 Q. With Philip Morris?

A. Do I know? I know only because I reviewed a document with counsel.

02:30:58 Q. And the answer is Day One did attempt to check that fact?

A. No, the answer is I did not know that -- that ABC attempted to check at the time.

02:31:38 Q. Would you go to the last page of this letter, the third page. And if you want to go back and look at where we are in this letter with me, I believe the first part of this letter is

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referring to Day One and then the second page Day One and Day One and then the last paragraph of the second page is about Day One as well. So the first paragraph on Page 3 is in fact changing subjects a little bit, okay, to the FDA. Okay? Just so I can put this in context. So the first paragraph on Page 3 reads, "It is unfortunate that FDA Commissioner Kessler, apparently based on similar misinformation, has indicated his view that it might be appropriate for cigarettes to fall under FDA regulation and possibly be banned." Do you know what similar misinformation Mr. Campbell is referring to in that sentence?

MS. ROBBINS: Well, I think she really does have to read the letter to answer your question.

Q. Go ahead. If you know. Do you know what he's referring to?

A. Kessler's statements are -- mirror the ABC -- the major claim of the ABC program.

Q. Kessler's statements come out first though?

A. I think Kessler's statement comes out first because as you said in the broadcast, he

Linehan

wanted to get out ahead of the program, learning the program was going to run. But it's --

02:34:26 Q. But they do come out --

A. But it's based on the evidence that ABC found, allegedly found and claimed which is this supposed spiking.

02:34:40 Q. Are you claiming that Kessler had access to what ABC was going to say in the broadcast?

A. I think that's what you said in the broadcast, at the end of the broadcast.

MS. ROBBINS: Why don't you just -- would you like to see the transcript and you can refer Mr. Payton to the portion of the transcript you're talking about.

A. When you have the picture of Kessler's letter up.

02:35:18 Q. I'll take you to the only reference I can think of here which is on Page 4, top of the left column. Are you there?

A. Mm-hmm.

02:35:28 Q. It says, it's right after the last thing I read you here which is "Philip Morris knows from its own experience," remember that,

Linehan

about the Next cigarette, and the next paragraph reads, and I'm going to read it you, it says, "How tobacco companies manipulate nicotine and their reluctance to take it out strongly suggest that they want smokers to get nicotine, and they want them to get nicotine in controlled doses. Several months ago when we tried to get a reaction about all this from the Food and Drug Administration the agency declined comment but immediately sent out investigators to look into the matter on their own. Then, learning of our Day One broadcast tonight, the FDA sent out this letter on Friday, 'Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction.'" Is that what you're referring to?

A. Yes.

Q. Anything else in here?

A. No.

MS. ROBBINS: In the entire transcript?

MR. PAYTON: Yes.

MS. ROBBINS: Well, there are other

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references. If you want her to look through the entire transcript she can do it.

02:36:32 Q. On the broadcast of the 28th I believe that's the only reference to the FDA.

MS. ROBBINS: No, that's not so. If you look at the very beginning of the --

MR. PAYTON: I understand, the lead-in.

MS. ROBBINS: Well, but that's part of the broadcast, John.

02:36:44 Q. Go ahead, look at the beginning.

A. I mean I think if you combine that with Forrest Sawyer's statement in the beginning, "For nearly a year Day One has been investigating nicotine. Late last week when word of our investigation got out the Food and Drug Administration announced that it is now considering whether to regulate cigarettes as drugs," combined with this statement clearly is almost bragging on the part of ABC that it was in fact the alleged evidence that they found in their investigation which prompted Kessler to go forward with a letter and then Kessler wanting to go forward ahead of the ABC broadcast. So that's

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Linehan

how I read it at the time.

Q. Turning to the two attachments to Mr. Campbell's letter. The first attachment, three-page attachment is entitled "Referring to cigarette smoking as an addiction is false, misleading and not scientifically supportable." Do you see that? Do you have that in front of you?

A. Yes.

Q. Have you seen this before?

A. I'm sure I did if it was an attachment to a letter going to Congress.

Q. Do you recall playing any role in the creation of this document?

A. No.

Q. Take a look at the second attachment, it's four pages long and dated March 1994 entitled "The FDA has no legal authority to regulate cigarettes as a drug." Do you recall seeing this before?

A. Have I seen this before?

Q. Yes.

A. Again, I don't know specifically, but if it were an attachment.

Linehan

02:39:06 Q. And is it also the same answer that you did not play a role?

A. Yes, I did not play a role.

02:39:14 Q. In the creation of that document?

A. No.

(Defendants' Linehan

Exhibit 18 for identification, multipage document, production numbers PA 933214 through PA 933221 and 2025773974 through 2025773981.)

02:40:00 Q. You've just been handed what's been marked as Linehan 18, a multipage exhibit that attaches documents that we have run over almost all of them with one exception before. It begins with the December 10, 1993 letter from Mr. Eriksen to Mr. Temko and then has a copy of the October 25, 1993 letter from Mr. Temko to Mr. Eriksen and interspersed in there are a February 28, 1994 statement and then the Kessler letter. Do you see that, they're all kind of jumbled up in there?

A. Yes.

02:40:54 Q. Let me give you the production numbers: PA 933214 through PA 933221 and the other production number is 2025773974 through

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Linehan

2025773981.

Do you see what this is?

A. Yes.

02:41:16 Q. These documents I believe in this order came from your files. Do you recall having this collection of documents clipped together?

A. No.

02:41:30 Q. Taking a look at them, can you tell me why they were collected together?

A. No, because they indicate different files.

41:44 Q. The first one indicates "File Waxman"; is that what you're looking at?

A. Yes.

02:41:48 Q. And that's your writing?

A. Yes.

02:41:50 Q. And the second one indicates file FDA?

A. Yes.

02:41:58 Q. And the third page which is the February 28 statement, it's not indicated that it's in any file at all I guess, it's just in here, correct?

A. That's right. I don't know why

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Linehan

they're clipped together.

02:42:38 Q. Why don't you go to the very last page which is Page 2 of a three-page letter from Temko to Eriksen dated October 25, 1993. Do you see that? It's a little bit out of order but that's Page 2 of the three-page letter?

A. Yes.

02:43:00 Q. And there are some margin marks. Do you recall if those are your marks?

A. Looks like my handwriting.

02:43:06 Q. Do you recall why you made those marks?

A. No.

02:43:12 Q. Do you see the question mark?

A. Yes.

02:43:16 Q. Can you take a look at the sentence it's next to and see if you recall why there was a question mark there?

A. I don't know why.

MR. PAYTON: I want to take a short break, just an afternoon break.

MS. ROBBINS: Sure. Although we have to leave at 4 o'clock.

MR. PAYTON: I understand.

Linehan

THE VIDEO OPERATOR: We'll go off the record at 2:43:47.

(A recess was taken.)

THE VIDEO OPERATOR: We're back on the record at 3:08:48.

03:08:56 Q. Ms. Linehan, where we left off before the break was we were talking about some documents that you had compiled and just before that we were talking about Mr. Campbell's March 2nd letter to, we saw one to a particular member of Congress and I think you said you did not recall being involved in the preparation of that letter but it, in the normal course of things, ^{would have} had gone through your office or been seen by you or someone in your office before it went out?

A. Yes.

03:09:30 Q. Did that letter go to all members of Congress? It's Exhibit 17.

A. That I don't recall specifically.

03:09:42 Q. Do you recall -- certainly it went to more than one member of Congress?

A. Yes.

03:09:46 Q. Is there, you know, a list of friends in Congress it would have gone to versus all

Linehan

members? Do you know how it was distributed is the question?

A. I can't remember how it was distributed. It would be certainly more than one.

03:10:00 Q. So that's March 2nd. On March 3rd, the 28th is Monday, the 1st is Tuesday, the 2nd is Wednesday. March 3rd, Thursday, do you recall participating in a meeting discussing these general issues, the Day One report, I believe at that point in time you were, Philip Morris was aware of an upcoming additional Day One report on March 7th, that would be the following Monday. Do you recall participating in a meeting to talk about it?

A. No, I have no recollection.

03:10:36 Q. Let me ask you to go into what has been marked as Exhibit -- it's the E-mails --

MS. ESPOSITO: Ten.

03:10:56 Q. Ten. And I'd like you to go to the third page from the end. It's Page 8 on the E-mail. Again, this is one of the documents you looked at in preparation, but you may not have looked at all of them carefully; is that fair?

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Linehan

The E-mail --

A. Yes.

MS. ROBBINS: I don't think she said even all of them. She looked at certain E-mails, but not all of them.

A. I'm not certain I saw all of them.

03:11:32 Q. Let me direct your attention to the E-mail at the very bottom. The one in the middle has a cc to you, but we're not there yet. That's March 7. I'm looking at the one that says March 3rd, do you see that, at the very bottom?

A. Yes.

03:11:46 Q. From Vic Han to Ellen Merlo and Steve Parrish?

A. Yes.

03:11:50 Q. And a long line of other ccs. It says "Met with Chuck." Chuck is Chuck Wall I take it?

A. I assume it is.

03:11:58 Q. "And Tony A," which is Tony Andrade, "with Carchman, Buffy on the phone from Chicago on Monday's upcoming segment of Day One." Buffy I take it is you; is that correct?

A. Yes.

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Linehan

03:12:10

1
2 Q. "The materials I had are out of
3 date. Tony is getting updated version, plus
4 other materials over night and I hope to have
5 tomorrow morning. I will be drafting a general
6 statement from those materials hopefully by
7 Friday end of day or Monday so we will have
8 something to work with on Tuesday." Does that
9 refresh your recollection in any way about this
10 meeting?

11 A. No.

03:12:34

12 Q. It continues on the next page: "I
13 will be trying to get the 9th floor conference
14 room for an 8:30 a.m. meeting on Tuesday with the
15 same cast of characters as last time. Only
16 change is Carchman is unavailable and will be
17 replaced by phone with Charles and Daylor. Buffy
18 will get on line too." I take Charles to be --
19 do you know who Charles is? Charles is Jim
20 Charles, the --

21 A. Jim Charles.

03:13:00

22 Q. The R&D guy?

23 A. Yes.

03:13:02

24 Q. He was retired at that point, or do
25 you remember?

Linehan

A. Well, I'm -- it's sometime in that year that he retired.

Q. And Daylor is the person we saw referenced earlier as one of the --

A. Frank Daylor, yes.

Q. It says "Buffy will get on line too." Does this refresh your recollection as to, number 1, whether or not you now recall participating in the March 1 meeting or participating in the upcoming meeting?

A. I'm sorry, I can't remember specific meetings.

Q. The next paragraph reads, "The only other thing is we have five scientists who have reviewed all data and signed strong statements saying there are no ingredients in our product that pose a threat to human health. The scientists and the statement were to be used for testimony for when shit really hits the fan." We will decide if Day One qualifies." Are you familiar with the statements from the five scientists?

A. No, I'm not. Yeah, I can vaguely remember a statement of some scientists, but I

Linehan

don't --

03:14:28 Q. Okay, the upcoming, I believe from these documents, that the upcoming Day One was thought to be about to focus on the ingredients that go into cigarettes, that was the subject. Do you now have any recollection as to what the statement that the five scientists signed was about?

A. Yes. I think it was a review of ingredients, whether it was called Philip Morris or industry specific, I don't know, basically concluding that the ingredients were safe.

03:15:18 Q. Do you remember who any of the scientists were?

A. No.

03:15:20 Q. Did you see that statement?

A. Yes, I did.

03:15:28 Q. Is it in your files?

A. I don't know.

(Defendants' Linehan

Exhibit 19 for identification, memorandum, to distribution, from Mr. Han, dated March 4, production numbers PA 283592 and 2023991004.)

16:14 Q. Ms. Linehan I've handed you what's

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Linehan

been marked Linehan Exhibit 19. It's a March 4 memo from Victor Han to a distribution list including you, PA 283592 or 2023991004.

It's just a memo discussing a meeting scheduled for Tuesday, March 8 in a conference room to discuss the response to the upcoming Day One. I'm only showing this to you to see if this helps your recollection with any more specifics about whether or not you now recall this meeting being scheduled and attending it?

A. No.

Q. Do you recall watching the March 7th Day One on ingredients?

A. Yes.

Q. Did you have a reaction to it?

A. I don't have much of a recollection of it.

Q. You have neither much of a recollection or reaction?

A. Recollection.

Q. I asked if you had a reaction to it?

MS. ROBBINS: At the time?

Q. At the time?

A. At the time?

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Linehan

03:17:30 Q. You don't remember?

A. I don't remember.

03:17:40 Q. Do you remember where you watched?

A. No. Probably at home.

03:18:56 Q. Were you involved in any way with Philip Morris's response to the March 7 Day One broadcast, or do you recall?

A. I just don't recall one way or the other.

(Defendants' Linehan

Exhibit 20 for identification, memorandum, to Philip Morris employees, from Mr. Campbell, dated March 8, 1994, with attachments, production numbers PA 426574 through PA 426582 and 2023916182 through 2023916190.)

03:19:14 Q. I'm going to show you the memo that William Campbell sent to Philip Morris employees right after. I've handed you a document that's marked Linehan Exhibit 20, a multipage document that begins with a memo from William Campbell to all Philip Morris in New York office and Ryebrook employees, dated March 8, 1994. And behind it looks like a statement and a letter from Covington & Burling dated March 7th which has an

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attachment which is entitled chronology. It goes from PA 426574 through PA 426582 or 2023916182 through 2023916190.

Did you review this in preparation for your deposition?

A. I don't think so.

03:20:44 Q. Do you recall reviewing this or seeing this memo from Mr. Campbell?

A. I don't recall this.

03:20:56 Q. What are Ryebrook employees, by the way?

A. Now, at the time, we've reconfigured who sits where, but Ryebrook was food, international employees. It used to be the old General Foods headquarters building.

03:21:22 Q. If you go to the first attachment which again appears to be just a statement by Philip Morris, it says at the top, "Contact Victor Han," do you see that?

A. Yes.

03:21:38 Q. Do you recall seeing this before? You don't know?

A. I just don't know.

21:46 Q. Let me ask you to look almost in the

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Linehan

center of the first page of the statement. It's under the section that says "Highlights of the letter that was delivered to Day One prior to tonight's program include the following." Do you see that?

A. Yes.

Q. And then the first bullet is "Cigarette manufacturers have furnished ingredient information to the Department of Health & Human Services for more than a decade. HHS has given no indication that its review of cigarette ingredients has created any basis for concern." Do you see that?

A. Yes.

Q. Do you remember being involved in this language being in here?

A. No.

Q. Do you remember the letter that I believe is a part of Exhibit 2? I've sort of forgotten what the numbering is, but Exhibit 2 is the August 17, 1993 memo that you authored and transmitted to the list of persons at Philip Morris that attached the correspondence between Representative Wyden and Huffington and Secretary

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Linehan

Shalala.

A. Yes.

03:23:54 Q. The HHS correspondence. Do you have that there?

A. Yes.

03:24:02 Q. Could you look at the letter from Walter Dowdle to the Honorable Ron Wyden which is the first attached letter and what I want to ask you is isn't it true that this letter expresses a concern about the ingredients on the ingredient list that HHS is trying to analyze?

A. Well, I'd have to read the letter.

03:24:40 Q. Okay.

A. There is no definitive bottom line answer. It's ambiguous. If you look at Page 3, second to last paragraph.

03:26:52 Q. I'm looking at Page 2, right in the center, the paragraph that begins "Your letter also inquired," do you see that?

A. Yes.

03:27:00 Q. "Whether any agency that has evaluated the ingredients included in the list reported concerns about any of the ingredients as potential health hazards. In 1990 Henry A.

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Waxman, chairman, Subcommittee on Health and the Environment, House Committee on Energy and Commerce requested HHS to review the scientific findings and regulatory status of specific ingredients. ^{of} These specific ingredients, HHS found that some were regulated under federal statute pertaining to hazardous substances.

Enclosed is a copy of the request and our response." Did you ever see the request and the response?

A. No.

Q. The next paragraph says, they essentially ask the National Cancer Institute to conduct some studies. I'll read it if you want.

A. Yes.

Q. The next paragraph says ^{that} "The question whether any ingredients are deemed to cause risk factors in any diseases or adverse conditions is extremely difficult to answer," and that sort of explains that. Okay?

A. Yes.

MS. ROBBINS: What's the question?

MR. PAYTON: I don't have a question pending.

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MS. ROBBINS: Oh, okay.

03:28:36 Q. And the next paragraph which carries over to the next page, you can look at it, but I'm looking at the sentence on the next page. It says "The ability to answer this question is further hampered by the fact that current law does not mandate that tobacco companies to provide either the amount of ingredients used or the specific brand in which they are used. Without such information it is effectively impossible to calculate the dosage of an ingredient in a cigarette." And I'm going on down to the paragraph you then pointed to which is the next to last paragraph which you said is inconclusive, right?

A. Yes.

03:29:20 Q. Do you conclude from that that there was no indication that HHS's review of cigarette ingredients had created any basis for concern?

A. Could you repeat the question.

MS. ROBBINS: He's pointing you to the sentence in the first bullet point. Having read the letter --

MR. PAYTON: That's correct.

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MS. ROBBINS: He's pointing you to the sentence in the first bullet point not in that exhibit book.

03:29:48 Q. Exhibit 20, I believe.

MS. ROBBINS: And he's asking you in this bullet point --

03:30:00 Q. Right, whether it's fair to say that HHS has given no indication that its review of cigarette ingredients has created any basis for concern?

A. So what was your question?

03:30:16 Q. Whether or not that statement, that "HHS has given no indication that its review of cigarette ingredients has created any basis for concern" is accurate?

A. Yes, I think it's accurate.

03:30:46 Q. Turn to the second attachment which is the March 7 letter from Clausen Ely, from Covington & Burling, to Richard Wald at ABC. Have you seen this letter before? You shook your head.

A. I don't think so.

03:31:12 Q. And attached to that letter is a three-page document that is headed "Chronology."

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Do you see that?

A. Yes.

Q. Have you seen that before?

A. No.

Q. I want to go back to the collection of E-mail that's Exhibit 10. I think it's right there in front of you. And I want to go to Page 8. I want to focus on the E-mail which is right in the center which is the March 7, 1994 E-mail from Shirley Arnott to Brendan McCormick, cc'd to you, Ellen Merlo, Steve Parrish. Do you see that?

A. Yes.

Q. Subject is Day One draft statement and it attaches a file that is identified as media statement for Vic. Do you know what that's referring to?

A. No, other than what it says, Day One draft statement.

Q. During this time period, actually during this week, this was the week of March 7, did you go on a trip to Richmond? Did you visit Richmond?

A. I don't know.

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03:34:14 Q. Was there a point in this time
period, that is from the point of the Day One
broadcast on February 28 up to the filing of the
complaint which is March 24th, about a month, in
that period did you visit the Richmond
facilities?

A. I may have. I don't have any --

03:34:30 Q. You don't remember?

A. No.

03:34:52 Q. Do you recall receiving what is
described here as the media statement for Vic?

A. No, I don't.

03:35:06 Q. Do I understand how the E-mail works
to this extent, that if you receive this E-mail
and it showed files, media statement for Vic, you
could have printed that statement out and looked
at it?

A. Yes. If I knew how to do that.

03:35:24 Q. You would have had your secretary
print that statement out so you could look at it;
is that right?

A. Yes.

03:35:30 Q. You have no memory of doing that or
not doing that?

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A. I just have no -- no. I may or may not have done that.

(Defendants' Linehan

Exhibit 21 for identification, six-page document, production numbers PA 426549 through PA 426544 and 2023914147 through 2023914152.)

Q. Ms. Linehan, I've just marked as Linehan Exhibit 21 a five-page document I believe, six-page document that is a memo from Tara Carraro to Victor Han that has a number of attachments to it. It's production number PA 426549 to PA 426544 or 2023914147 through 2023914152.

Have you reviewed this document before?

A. No.

Q. These documents?

A. No.

Q. Do you recall ever seeing them?

A. No, I've never seen them.

Q. Although this looks like the March 3rd or some kind of a draft letter, I don't know.

A. But I don't recall seeing it.

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Linehan

03:38:28

Q. Do you remember attending a meeting on March 14? Let me just place you in time. February 28th was a Monday, March 7 was a Monday and March 14th was a Monday. Do you recall attending a meeting either in person or by phone on March 14th about these continuing issues?

A. No, I don't recall it. I may or may not have been involved.

03:39:04

Q. Do you recognize any of the writing on the first page of this exhibit?

A. It's too good to be mine. No.

39:50

Q. I want to do something a little different. You'll like this, Barbara. I want to use an exhibit that was marked in the Han deposition and just show it to you to see if this refreshes your recollection. It is Han 3 and if you don't have it I can hand it to her.

MS. ROBBINS: I have it.

03:40:14

Q. It is his notes. It's Han 3 and I've opened it to the page I want you to look at which is, if you show it to Barbara she can find that page.

MS. ROBBINS: This was identified at Mr. Han's deposition as a notebook that he kept,

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this whole document, this is a page of the notebook.

03:40:38 Q. This is notes that he kept. I cannot date them all precisely, and I'm showing this to you just to see if it helps refresh your recollection about a meeting you participated in. If you go back two pages I'm going to try to show you where we are in time. Go back two pages as a reference to March 7. Do you see that?

11 A. Yes.

03:41:02 Q. I just want to then turn, we then have a redacted page and we have the page I told you to go to, and if you turn again you will see there's a reference to 3/14 on the next page. Okay? I'm not positive that everything goes in order, but I'm just trying to get us reasonably placed in time to some extent, okay?

19 A. Okay.

03:41:22 Q. Now, this page is Mr. Han's notes and on this page there is a note on the right-hand side, sort of one-third from the top. I'm going to read it. You can read along with me. It says "Buffy, how get ahead of secrecy issue?" Do you see that?

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Linehan

A. Yes.

03:41:46 Q. Does that mean anything to you?
You're Buffy, right?

A. Yeah. I don't know what he would be referring to.

03:42:00 Q. Let me read the second part and again, we have not heard Mr. Han's testimony on this, but I believe I can read this. I believe the next little line says "Invite committee staff to Richmond." Do you see that?

A. Yes.

12:16 Q. Does that ring a bell?

A. I think generally he's talking about the perception that the ingredients list was something that was held by the government and secret or something like that, and that they wanted to open up the process.

03:42:48 Q. The note on the left side, if you go over to the left side and down, it says something that I actually cannot read the first thing. The next line says "Press conference." Can anyone read the first line?

MS. ROBBINS: Ads.

13:08 Q. It looks like advertorials.

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Linehan

A. Advertorials.

MS. ROBBINS: Does that mean something?

A. It's a commercial, it looks like a --

03:43:16 Q. It looks like an Op Ed piece?

A. Yes.

03:43:18 Q. But you pay for it?

A. Yes.

03:43:22 Q. The next one says "Press conference?"

MS. ROBBINS: Lawsuit.

03:43:28 Q. Announce ingredients?

A. Yeah.

03:43:32 Q. And the next line says "Ingredient disclosure"?

A. Yes.

MS. ROBBINS: Probably ingredients, plural.

03:43:40 Q. Ingredients disclosure. The next line says "Gentlemen's agreement/news organization." Does any of this ring any bells about meetings you participated in where these things were discussed?

A. Not -- not the -- not what you just read.

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Linehan

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03:44:36

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03:45:46

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Q. Do you recall participating in meetings or telephone conversations around this time? I believe this is mid-March, March 14 or so, in which there was discussion about a lawsuit?

MS. ROBBINS: You can answer that yes or no.

MR. PAYTON: That's all I'm asking.

MS. ROBBINS: You should not relay the substance of any such conversation, but you should answer yes or no if you can recall.

A. Lawsuit? I don't know.

Q. Do you have any idea what gentlemen's agreement is referring to?

A. No.

Q. Is there something on this page that does refresh your recollection?

A. It looks like a real hodgepodge of notes and there's a lot that have more to do with the media communications than anything I would be involved with.

Q. Do you remember if it was your idea to release the ingredients list?

A. No, I don't think the idea originated

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with me.

Q. Do you remember if it was your idea to invite the FDA to Richmond?

A. No, it was not.

(Defendants' Linehan

Exhibit 22 for identification, collection of news clips, production numbers PA 8392198 through PA 839221 and 22023913900 through 2023913903.)

Q. I'm going to show this to you and I'm about to ask you some questions about the letter William Campbell wrote that was printed in The New York Times on March 15, 1994.

I've handed you what's been marked Linehan Exhibit 22, a four-page document that is a collection of I think news clips that I believe Philip Morris puts together regularly and this is one set of clips.

A. Yes.

Q. Called "FYI AM, I guess." Is there a PM version of this?

A. No, that's why I was laughing. I never heard -- I never recalled the AM being there, but.

Q. It has production number PA 8392198

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1 Linehan
2 through PA 839221 or ²⁰²³⁹¹³⁹⁰⁰~~22023913900~~ through
3 2023913903.

4 This is something that regularly is
5 distributed?

6 A. Yes, every morning.

03:48:14 7 Q. It's the morning clips?

8 A. Yes.

03:48:24 9 Q. Let me go back a second. Do you
10 recall -- that's all right. Never mind.

03:48:38 11 Q. The letter I wanted you to look at is
12 on the second page and it's the right-hand column
13 and it is William Campbell's letter to the editor
14 and it's titled, by the Times anyway, "Decrease
15 in levels." Do you see that?

16 A. Yes.

03:48:54 17 Q. Did you play a role in drafting or
18 reviewing this letter?

19 A. No.

03:49:00 20 Q. Did you see it before it went out?

21 A. No, I don't recall seeing it.

22 (Defendants' Linehan
23 Exhibit 23 for identification, collection of
24 letters, production numbers PA 933126 through PA
25 93330 and 2025769241 through 2025769245.)

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Linehan

Q. You've been handed what's been marked Linehan 23, a five-page document that is a collection of letters. It begins with a letter dated March 18, 1994 from William Campbell to David Kessler, and this first document is obscured by what looks like a Post-it or something. And it has a couple of other letters attached to it. The second page is a readable version of the same document as the first page, the March 18th letter. The third page is a March 17 letter -- March 17, 1994, from David Kessler to William Campbell, and the final two pages are a March 22, 1994 letter from Senators Robb and Warner and Congressman Scott and Bliley of Virginia, to Charles Bowsher who's the comptroller general of the United States, PA 93312, not 3130 933126 through ~~PA 93330~~ and 2025769241 through 2025769245.

Turn to the second page, to the readable version of the letters. Do you remember seeing this exchange of correspondence between Mr. Kessler, that's his March 17 letter and Mr. Campbell, his March 18 letter?

A. Yes.

Linehan

03:52:28

Q. Did the letter from Mr. Kessler to Mr. Campbell, did that come to your attention? Was it circulated to you?

A. I'm sure in the course of the time period I would have gotten a copy of it.

03:52:50

Q. Did Mr. Campbell's letter go through your office before it went out to Mr. Kessler?

A. I can't remember specifically.

03:53:06

Q. Let's take a look at Mr. Kessler's letter, the 1/17 letter. It reads, "I read with great interest your March 7 letter that appeared in the March 15 issue of the New York Times, concerning the amount of nicotine in various brands of your cigarettes. Your statement that your company sets the amount of nicotine goes to the heart of the issue raised in our recent letter to the Coalition on Smoking or Health." Do you see that sentence?

A. Yes.

03:53:40

Q. Did Philip Morris or did Mr. Campbell ever take issue with that sentence by Mr. Kessler, do you know?

MS. ROBBINS: I object to the form of the question. Go ahead.

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A. I don't know. I mean I think
Mr. Campbell in testimony --

03:54:04 Q. Said as much?

A. Stated that we set the amount of tar
or whatever -- whatever verbs you'd like to use,
not nicotine, but.

03:54:46 Q. Well, you'll notice in his letter,
March 18, 1994, to Mr. Kessler, Mr. Campbell does
not take issue with that statement at all, do you
see that?

A. Yes.

MS. ROBBINS: Do you have a
question?

MR. PAYTON: I think she answered it.

I think we might as well stop here.

THE VIDEO OPERATOR: The deposition
of Kathleen Linehan will adjourn at 3:55:29 on
videotape number 3 for June 14th, 1995.

(Time noted: 3:55 p.m.)



KATHLEEN LINEHAN

Subscribed and sworn to before me
this _____ day of _____, 1995.

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MANHATTAN REPORTING CORP.

Legalization Nr. 8476 - I Olivier Verrey, Notary Public at Lausanne, Switzerland, hereby certify the authenticity of the signature apposed on the present document by Ms. Kathleen Linehan. _____

Lausanne, the fourteenth day of March nineteenhundredandninety-six. _____



Kathleen Linehan



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Linehan

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

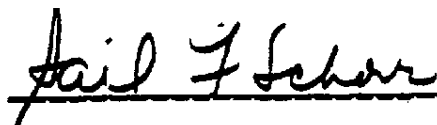
COUNTY OF NEW YORK)

I, GAIL F. SCHORR, a Certified
Shorthand Reporter and Notary Public within and
for the State of New York, do hereby certify:

That KATHLEEN LINEHAN, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by the
witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 15th day of June, 1995.



GAIL F. SCHORR, C.S.R.

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Linehan

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(Defendants' Linehan Exhibit 5 for identification, three-page letter, to Michael Eriksen, from Stanley Temko,		

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1	Linehan		
2	dated October 25, 1993, production		
3	numbers PA 933216, PA 933220 and PA		
4	933221.).....	58	7
5	(Defendants' Linehan Exhibit 7 for		
6	identification, two-page letter, to Mr.		
7	Eriksen, from Mr. Temko, dated January		
8	19, 1994, production numbers PA 421070		
9	through PA 421071 and 2022997673		
10	through 2022997674.).....	75	13
11	(Defendants' Linehan Exhibit 8 for		
12	identification, one-page document,		
13	production number PB 118607 and		
14	2031361000.).....	88	24
15	(Defendants' Linehan Exhibit 9 for		
16	identification, memorandum, to		
17	distribution, from Mr. Han, dated		
18	February 25, 1994, production numbers		
19	PA 420358 and 420359 or 2022847057		
20	through 2022847058.).....	91	8
21	(Defendants' Linehan Exhibit 10 for		
22	identification, compilation of E-mails,		
23	production numbers PA 426904 through PA		
24	426912A and of 2024015018B through		
25	2024015027.).....	96	24

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2	(Defendants' Linehan Exhibit 11 for		
3	identification, multipage document,		
4	production numbers PA 100332 through PA		
5	100338 and 2023913510 through		
6	2023913516.).....	100	17
7	(Defendants' Linehan Exhibit 12 for		
8	identification, three-page letter, to		
9	Scott Ballin, from David Kessler, dated		
10	February 25, 1994, production numbers		
11	PA 933217 through PA 933219 and		
12	2025773977 through 2025773979.).....	106	17
13	(Defendants' Linehan Exhibit 13 for		
14	identification, memorandum, to		
15	distribution, from Mr. Han, dated		
16	February 28, production numbers PA		
17	420356 and PA 420357 and 2022847055 and		
18	2022847056.).....	120	20
19	(Defendants' Linehan Exhibit 14 for		
20	identification, index cards, production		
21	numbers PA 933131 through PA 933137 and		
22	2025769246 through 2025769252.).....	121	25
23	(Defendants' Linehan Exhibit 15 for		
24	identification, transcript of the		
25	February 28th broadcast.).....	148	3

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1		
2	(Defendants' Linehan Exhibit 16 for	
3	identification, two-page statement	
4	from Philip Morris dated March 1, 1994,	
5	production numbers PA 426583 and PA	
6	426584 and 2032023916191 and	
7	2032023916192.).....	181 10
8	(Defendants' Linehan Exhibit 17 for	
9	identification, documents, production	
10	numbers PA 933139 through PA 933148 and	
11	2025769254 through 2025769263.).....	182 25
12	(Defendants' Linehan Exhibit 19 for	
13	identification, memorandum, to	
14	distribution, from Mr. Han, dated March	
15	4, production numbers PA 283592 and	
16	2023991004.).....	200 20
17	(Defendants' Linehan Exhibit 20 for	
18	identification, memorandum, to Philip	
19	Morris employees, from Mr. Campbell,	
20	dated March 8, 1994, with attachments,	
21	production numbers PA 426574 through PA	
22	426582 and 2023916182 through	
23	2023916190.).....	202 10
24	(Defendants' Linehan Exhibit 21 for	
25	identification, six-page document,	

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426544 and 2023914147 through

2023914152.) 211 3

(Defendants' Linehan Exhibit 23 for

identification, collection of letters,

production numbers PA 933126 through PA

93330 and 2025769241 through

2025769245.) 218 21

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